HIEW KON FAH & ANOR A

v.

KWAN NGEN WAH & ORS

HIGH COURT SABAH & SARAWAK, SANDAKAN B
HAMID SULTAN ABU BACKER JC
[SUIT NO: S22-27-2005]
13 JULY 2007

CIVIL PROCEDURE: *Injunction - Interlocutory injunction to restrain plaintiffs from entering land pending final determination of suit - Plaintiffs forcefully entered land in possession of defendants and damaged property - Police not acting on complaint lodged by defendants - Situation bordering on violence with serious consequences - Whether application should be granted* C D

CIVIL PROCEDURE: *Contempt of court - Breach of court order - Plaintiffs' application for injunction to evict defendants from land dismissed - Plaintiffs thereafter forcefully entered land and damaged property - Whether plaintiffs' conduct amounted to contempt* E

POLICE: *Duties of police - Failure to act on complaint lodged - Whether police duty bound to act on complaint - Whether court could order police to act - Whether court has jurisdiction to grant protection orders - Whether non-compliance with orders attracted penal sanction under art. 126 Federal Constitution* F

The plaintiffs commenced an action against the defendants alleging that the 1st plaintiff was the registered owner of some lands ('the lands') in the possession of the defendants. The defendants maintained that they had purchased the lands. The plaintiffs G applied for a mandatory injunction to evict the defendants from the lands but the learned judge dismissed the application and set the case down for trial at a later date. In the interim period, the defendants made this application for an interlocutory injunction to restrain the plaintiffs from entering the lands. They alleged that the H 1st plaintiff had taken the law into his own hands by sending a large group of workers to force their way into the lands and thereby committing acts of vandalism. The defendants claimed to have restrained their own workers from retaliating but that the situation was highly explosive bordering on violence which might I lead to serious consequences. Further, the police refused to act on their complaint on the ground that it was a civil matter.

Held (allowing defendants' application):

(1) There were serious issues to be tried which required the court's intervention to ensure that there was no breach of peace, even more so since the defendants were complaining that the police were not prepared to perform their task on the misconceived notion that it was a civil case. The following should be taken into consideration. Firstly, the defendants were in possession of the lands. Secondly, the plaintiffs' application for mandatory injunction, principally to obtain possession of the lands, was dismissed. Thirdly, the plaintiffs' attempt to take law into their own hands notwithstanding the dismissal of their application for mandatory injunction amounted to contempt. (para 4)

(2) The law requires the police to investigate a complaint that is serious in nature once it is lodged. The court would not hesitate to issue police protection orders to the defendants to ensure that law and order was maintained in the event the defendants filed for an application for the same and produced the necessary evidence to show the seriousness of the threat. (para 4)

(3) The courts' role under the Federal Constitution and within the realm of separation of powers is not only to sit as an umpire and adjudicate on what is wrong or right. It has a further duty to ensure that all aspects relating to the administration of justice runs prim and proper. For this purpose, courts can question any acts, omissions or negligence of any person or authority. This is normally done by way of prerogative writs, orders and/or directions that has been to a large extent encapsulated in para. 1 of the Additional Powers of the High Court pursuant to s. 25(2) of the Courts of Judicature Act 1964. These orders and directions and the related jurisprudence have become quite forgotten by our advocates and in consequence elements of justice at various stages often have been compromised before reaching the court. (para 4)

(4) Where, in the course of hearing any application or complaint, it comes to the knowledge of the court that the life or limb of the litigants or the persons concerned are in imminent danger, the court is seized with the jurisdiction to issue relevant relief under limited circumstances. (para 4)

(5) The public has a right to expect the court to protect its rights. The court is constitutionally duty bound to give orders and/or directions to relevant authorities when there is any failure by them to perform an act that they are duty bound to discharge, more so when it relates to the administration of justice. (para 4)

(6) The High Court has jurisdiction and power to grant protection orders within the doctrine of separation of powers and within the scope of the additional powers of the High Court. Failure to comply with the orders and/or directions of the court by any person or authority will attract the penal sanction pursuant to art. 126 of the Federal Constitution. (para 4)

Case(s) referred to:
American Cynamide v. Ethicon [1975] AC 396 ***(refd)***
Dilip K Basu v. State of West Bengal AIR [1997] SC 3017 ***(refd)***
Fellows v. Fisher [1975] 2 All ER 829 ***(refd)***
John Russell & Co Ltd v. Cayzer, Irvine & Co Ltd [1916] 2 AC 298 ***(refd)***
Keet Gerald Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 CA ***(refd)***
Lian Keow Sdn Bhd v. Overseas Credit Finance Bhd [1982] CLJ 350; [1982] CLJ (Rep) 182 FC ***(refd)***
Sivaperuman v. Heah Yeong Realty Sdn Bhd [1979] 1 MLJ 150 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 25(2)
Federal Constitution, art. 126

For the applicants/defendants - Alexander Siew; M/s Alex Siew & Co
For the respondents/plaintiffs - Rizwandean M Borhan; M/s Ansari & Co & M/s Tan Pang Tsen & Co

Reported by Usha Thiagarajah

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my ex-tempore judgment delivered on 13 July 2007 in respect of the defendants' application seeking for an injunction *inter alia* to restrain the plaintiffs by themselves, or agents or servants or employees, from entering or remaining on the lands and from interfering with the defendants' possession and cultivation of the lands, until after final determination of this action or until further order, etc.

[2] This action involves a dispute among the various parties in respect of 46 parcels of native lands located at Sungai Latangan, Kinabatangan. The 1st plaintiff, in the original action claims to be the registered owner. The 1st plaintiff's claim is being disputed by the defendants (in the original action) who maintain that they had purchased the lands in 1992. However, it is not disputed among the parties that the defendants are and have been in possession of the lands since 1990's. The defendants affirm that they were the ones who developed the lands into an oil palm plantation and continued to cultivate the lands as an oil palm plantation. The plaintiffs' application for mandatory injunctions to evict the defendants from the lands and to stop the defendants from cultivating the lands was dismissed by Justice Linton Albert on 24 February 2006 with costs. The case has been set down for trial from 29 September to 31 October 2008. In this application, the defendants allege that (i) in the last month or so, the 1st plaintiff had taken the law into his own hands and among other things, has sent a large group of workers to force their way into the plantation, together with several vehicles and equipment. (ii) these intruders are now going around the plantation attempting to harvest the oil palm fruits by force. In addition, several acts of vandalism and property destruction have been committed, including smashing of windscreens of several of the defendants' lorries and vehicles and puncturing of the tyres of all these vehicles. (iii) the defendants have tried to restrain their own workers from retaliating. However, the present situation is highly explosive, with two large groups of workers in the plantation, each with access to cutting tools, confronting one another. (iv) violence may break out at any moment, with the consequence of serious injury and even loss of lives. (v) a number of police reports have been made, but in vain, since the police are refusing to act on the grounds that it is a civil matter. (vi) in consequence seeking the injunction to maintain the *status quo*.

[3] The principles in respect of interlocutory injunctions are well settled and can be summarised as follows:

(a) Before the case of *American Cynamide v. Ethicon* [1975] AC 396, the general principle applied to obtain an interlocutory injunction was that the applicant in his affidavit must make out a *prima facie* case to the effect that he would be entitled to obtain a permanent injunction at the trial. However, the House of Lords in *American Cynamide (supra)* held that this

principle was overstated and they set out the test required to be satisfied before an interlocutory injunction will be granted. The House of Lords stated that where an application for an interlocutory injunction is before the court, the court must:

(i) satisfy itself on the evidence before it, that the plaintiff has 'a real prospect' of succeeding in his claim for a full injunction at the trial. If it does not, the injunction may not be granted.

(ii) if the court is satisfied, the court should then go on to consider:

(a) whether, if the plaintiff is successful at the full trial, he could be adequately compensated in damages for the loss he would have suffered by the defendant being allowed to continue to act unlawfully. If damages would be an adequate remedy and if the defendant could afford to pay them, the injunction should not be granted.

(b) if damages would not adequately compensate the plaintiff; whether if the defendant is successful at the trial and an interlocutory injunction had been granted, he could be adequately compensated in damages for being restrained from doing something which he was lawfully entitled to do, up till the date of the trial. If damages would, in this way, be an adequate remedy, and the plaintiff could afford to pay them, an injunction should be granted.

(iii) where there is doubt as to the adequacy of damages as a remedy to either or both parties, then the court should look at all the circumstances of the case and decide whether the 'balance of convenience' is in favour of granting an injunction.

(iv) in an instance where the arguments based upon the balance of convenience appear to be evenly balanced, the court should preserve the *status quo*, ie, if the injunction is to prevent the defendant from doing something he is already doing, it should be refused, whereas if it is to stop him starting a new activity, it should be allowed.

A (b) In *Fellows v. Fisher* [1975] 2 All ER 829, Sir John Pennycuick summarised the principle established in the *American Cynamide case (supra)* as follows:

(i) provided the court is satisfied that there is a serious
B question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case.

(ii) the court must consider whether the balance of convenience lies in favour of granting or refusing
C interlocutory relief.

(iii) 'As to that', the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the date of application and the trial, in which case no interlocutory
D injunction should normally be granted.

(iv) if damages would not provide an adequate remedy, the court should then consider whether, if the plaintiff fails, the defendant would be adequately compensated under the
E plaintiff's undertaking in damages, in which case there would be no reason on this ground to refuse.

(v) then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the
F balance should this otherwise be even, being the preservation of the *status quo*. By the expression *'status quo'* what is meant is the position prevailing when the defendant embarked on the activity sought to be restrained. Different considerations might apply if the plaintiff delays unduly his
G application for relief.

(vi) finally, and apparently only when the balance still appears even, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence.

H (c) The four-tier test stated in the case of *American Cynamide (supra)* can be summarised as follows:

(i) is there a serious question to be tried? Here the applicant
I must satisfy the court that:

(a) the claim is not frivolous or vexatious; (b) the claim has some prospect of success (not necessarily a *prima facie* prospect of success);

(ii) which way the balance of convenience lies? ie, if an injunction was refused, but at the trial the plaintiff were to win, would damages be enough to compensate him for the loss he has suffered by not having the injunction granted. Damages will not be adequate if;

(a) the plaintiff's loss is not financial; (b) the plaintiff's loss cannot be quantified with any sort of precision; (c) if the defendant has no assets to pay damages.

(iii) if the defendant is restrained and later it turns out to be wrong, will damages compensate him?

(iv) where does the balance of hardship lie?

If there is no obvious imbalance, the court preserves the *status quo*. In exceptional cases the court goes to the fifth test to consider who will win the case on its merits based on the agreed facts before the court.

(d) The principle set out in *American Cynamide (supra)* was cited by Abdoolcader J (as His Lordship then was) in *Sivaperuman v. Heah Yeong Realty Sdn Bhd* [1979] 1 MLJ 150, where His Lordship observed:

> The Principles governing interlocutory injunctions are dealt with in my judgment in Wah Loong and the case invariably referred to these days in this regard is the decision of the House of Lords in *American Cyanamid Co. v. Ethicon. Ltd.*
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> I think the basic principles in *American Cyanamid* can be aptly put thus: In order to be able to grant an interlocutory injunction, the court does not have to be satisfied that if the case went to trial on no other evidence than is before the court on the hearing of the application for interlocutory relief, the plaintiff would be entitled to a permanent injunction in the same terms as that sought in the interlocutory proceedings. Where damages would be an adequate remedy, no interlocutory injunction should normally be granted, but if there is doubt as to the adequacy of damages, the question of the balance of convenience arises, and although it might not be improper to take into account,

A as one of the many varying factors relevant to this question, the relative strength of each party's case, this should be done only on the basis of facts disclosed by the affidavit evidence as to which there is no credible dispute, without embarking on anything resembling a trial of the action. When an interlocutory injunction is sought, the balance of convenience will be the overriding consideration. American Cyanamid has been discussed and applied in a number of cases such as *Fellowes & Son v. Fisher* and *Hubbard v. Pitt*, and the position as formulated by these cases has been felicitously put by Slade J, in re Lord Cable, decd. to this effect, that it is necessary for any plaintiff seeking interlocutory relief to show that there is at least a serious question to be tried and to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim at the trial.

(e) The principle governing the granting of an interlocutory injunction was stated in a simple and lucid language by Salleh Abbas FJ (as His Lordship then was) in *Lian Keow Sdn Bhd v. Overseas Credit Finance Bhd.* [1982] CLJ 350; [1982] CLJ (Rep) 182, His Lordship observed:

> An interlocutory injunction is a temporary and discretionary remedy. To consider whether to grant it or to refuse it the court is not concerned with the chances of success or failure of the appellants in proving their civil suit at the forthcoming trial, neither is the court's function to evaluate the evidence and materials before it for that purpose. The court is simply concerned with what it has to do in the meantime in order to protect the right of the parties so that no irreparable injury would be caused to either of them. Further whilst the court is not concerned with such questions the court must however, be satisfied that there are serious questions to be gone into in that suit, lest an application for an injunction should be made on frivolous and vexatious grounds. *(American Cyanamid v. Ethicon Ltd.)*

(f) In *Keet Gerald Francis Noel John v. Mohd Noor @ Harun b Abdullah & 2 Ors* [1995] 1 CLJ 293, Justice Gopal Sri Ram JCA summarised the precise approach to be adopted in hearing an application for an interlocutory injunction. His Lordship opined:

To summarise, a Judge hearing an application for an interlocutory injunction should undertake an inquiry along the following lines:

First, he must ask himself whether the totality of the facts presented before him discloses a *bona fide* serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry;

Second, having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. He is entitled to take into account, *inter alia*, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in a financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the Judge would be entitled to dispense with the usual undertaking as to damages (see: *Cheng Hang Guan v. Perumahan Farlim (Penang) Sdn Bhd* [1988] 3 MLJ 90). Apart form such cases, the Judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee;

A Thirdly, the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the *status quo*, an
B expression explained by Lord Diplock in *Garden Cottage Foods Ltd. v. Milk Marketing Board* (1984) AC 130 and applied in *Cheng Hang Guan (supra)*. It is a judicial discretion capable of correction on appeal. Accordingly, the Judge would be entitled to take into account all discretionary considerations, such as delay in the making of the
C application or any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation in the event that he succeeds in establishing his claim at the trial. Any question going to the public interest may, and in appropriate cases should, be taken into
D account. A Judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

[4] From the pleadings and the affidavits filed herein, it is clear that there are serious issues to be tried and they require the
E court's intervention and if necessary to make proper directions and orders to ensure that there is no breach of peace. This is more so since the defendants are complaining that the police are not prepared to perform their task on the misconceived notion that it is a civil case. My reasons for stating so are as follows:

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(i) The defendants are in possession of the lands.

(ii) The plaintiffs had filed for mandatory injunction principally to obtain possession. The applications have already been dismissed by this court by the previous judge.

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(iii) The plaintiffs' attempt as alleged by the defendants to take law into their hands, notwithstanding a suit before the court has been filed by the plaintiffs and their application for mandatory injunction has been refused, amounts to contempt.
H In such cases, the court will be inclined to make the necessary orders, although the plaintiffs did not have sufficient time to reply to the affidavits of the applicants. In this instance the defendants have also alleged that the police have refused to take the necessary action on the grounds that the dispute is
I civil in nature. I think the law requires the police to investigate a complaint which is serious in nature as this once it is

lodged. I also stress that the court will not hesitate to issue police protection orders to the defendants to ensure law and order is maintained, in the event the defendants file for an application for the same and produce the necessary evidence before the court to show the seriousness of the threat. However, as the application for police protection order is not before me, I will not elaborate on the nature and scope of the said order until an opportune moment, save to say, that:

(a) The courts' role under the Federal Constitution and within the realm of separation of powers is not only to sit as an umpire and adjudicate what is wrong and what is right. It has a further duty to ensure that all aspects relating to administration of justice runs prim and proper. For this purpose, courts can question any acts, omissions or negligence of any person or authority. This is normally done by way of prerogative writs, orders and/or directions which has been to a large extent encapsulated in para. (1) of the Additional Powers of the High Court, pursuant to s. 25(2) of the Courts of Judicature Act 1964 (CJA 1964). I have dealt with this area of the law in my judgment delivered on 5 June 2007 in the case of Kota Kinabalu High Court JR K25-19 of 2006 *Chong Chung Moi @ Christine Chong v. The Government of the State of Sabah & 2 Ors*. These orders and directions and the related jurisprudence have become quite forgotten by our advocates and in consequence elements of justice at various stages often have been compromised before reaching the court. These orders and directions are essential to enhance the importance, integrity and magnanimity of judicial process for which the courts are bulwark under the Federal Constitution. Courts in England, pursuant to such powers, have formulated on and of various orders and directions to stand as a guideline for person or authority to operate efficiently. The root principle of the English law as to jurisdiction is that the judges stand in the place of the Sovereign, in whose name they administer justice. (See *John Russell & Co Ltd v. Cayzer, Irvine & Co Ltd* [1916] 2 AC 298 at 302, HL). The Indian Courts have exercised such jurisdiction and powers in various cases, for example, in *Dilip K. Basu v. State of West Bengal* AIR [1997] SC 3017, where it was stated that:

> There is no wrong without a remedy. The law wills that in every case where a man is wronged and undamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

In this case, the Supreme Court of India treated a letter of complaint as a writ petition (meaning an application seeking prerogative orders as stated in CJA 1964) and *su motto* issued notices to all State Government and made various orders. That part of the judgment reads as follows:

> The Executive Chairman, Legal Aid Services, West Bengal, a non-political organisation registered under the Societies Registration Act, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20, 21 and 22 of July, 1986 and in the Statesman and Indian Express dated 17th August, 1986 regarding deaths in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It also stated in the letter that efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter along with the news items be treated as a writ petition under "public interest litigation" category.
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> 2. Considering, the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock up, the letter was treated as a writ petition and notice was issued on 9.2.1987 to the respondents.
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> 3. In response to the notice, the State of West Bengal filed a counter. It was maintained that the police was not hushing up any matter of lock-up death and that wherever police personnel were found to be responsible for such death, action was being initiated against them. The respondents characterised the writ petition as misconceived, misleading and untenable in law.

> 4. While the Writ petition was under consideration, a letter addressed by Shri Ashok Kumar Johri on 29.7.87 to the Hon'ble Chief Justice of India drawing the attention of this Court to the death of one Mahesh Bihari of Pilkhana, Aligarh in police custody was received. That letter was also treated as a writ petition and was directed to be listed alongwith the writ petition filed by Shri D.K. Basu. On 14.8.1987 this Court made the following order:
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> In almost every state there were allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock-up deaths. At present there doesn't appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue notices to all the States Governments to find out whether they are desire to say anything in the matter. Let notices be issued to all the State Governments. Let notice *SHRI D.K. BASU v. State of West Bengal* http://www.alrc.net/doc/ mainfile.php/cl_india/ 143/4 of 21 14/7/07 02:41also issued to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today.

In this case, the court laid down the requirements of power of arrest in para. 36 of the judgment and declared monetary or pecuniary compensation as an appropriate and indeed effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to the life of a citizen by the public servants. The court declared that the State is vicariously liable for their acts. The court also ordered as follows:

> A. The following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measurers: (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. (2) That the police officer carrying out the

arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest. (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. (5) The person arrested must be made aware of this right to have someone informed of his arrest or *SHRI D.K. BASU v. State of West Bengal* http:// www.alrc.net/doc/mainfile.php/cl_india/143/2 of 21 14/7/07 02:41 detention as soon as he is put under arrest or is detained. (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the, police officials in whose custody the arrestee is. (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her bed, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee. (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well. (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaga Magistrate for his

record. (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. (11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board. (Para 36)

B. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of arrestee. (para 39)

C. It is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is victoriously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. (para 56)

D. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damage which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. (para 56)

E. The quantum of compensation will, of course, depend upon the peculiar facts of each case and so strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the

A fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a *SHRI D.K. BASU v. State of West Bengal* http://www.alrc.net/doc/mainfile.php/cl_india/143/3 of 21 14/7/07 02:41civil suit.

(b) In my view, where a court in the course of hearing any application or complaint brought before it, comes to the knowledge that the life or limb of the litigants or the persons under its purview, or that of the public order or property or rights of property are in imminent danger, then under limited circumstances, the court, as the protector of the Federal Constitution and of the people who fall within its purview, is seized with jurisdiction to issue relevant relief. The nature of such relief will depend on the problem that requires an answer and may take many forms. Judicial precedents in the commonwealth jurisdiction has demonstrated to us that a judge can grant any form of orders to arrest a wrong and in that process can formulate and advance the remedy within its jurisdiction and powers, directions and/or remedies. All these orders are designed to protect the constitutional rights of the public and/or ensure due performance of the related organs of government, in the interest of the public. The public, have a right to expect a court to protect their rights. It is trite that the court is constitutionally duty bound to give orders and/or directions to relevant authorities when there is any failure of person or authorities to perform an act which they are duty bound to discharge, is brought to its notice, more so when it relates to the administration of justice. Further, to do so, in cases where it is necessary and essential, the court is duty bound to formulate and advance the remedy.

(c) Police protection orders are very commonly applied in syariah courts and the syariah courts make such orders pursuant to its inherent jurisdiction and it is often granted by way of *ex parte* application. The High Court has jurisdiction and powers to grant such orders within the doctrine of Separation of Powers and within the scope of

the Additional Powers of the High Court. Failure to comply with the orders and/or directions of the court by any person or authority will attract penal sanction, pursuant to art. 126 of the Federal Constitution which reads as follows:

> The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt of itself.

[5] I have read the application, affidavits and the submission of the parties in detail. For reasons stated above, I have no hesitation to allow the defendants' application for injunction with costs in the cause and direct the registrar for the suit to be fixed for trial within one month from the date of this order. I hereby order so.